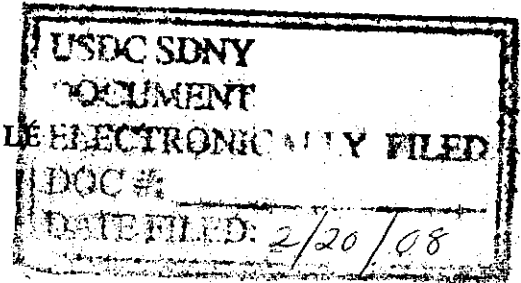


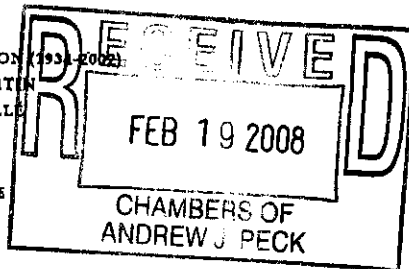
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TELECOPIER  
631 421-5439

February 15, 2008

Magistrate Judge Andrew J. Peck -VIA FAX ONLY-212-805-7933  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**BY FAX MEMO ENDORSED**

Re: O'Grady v. Butler, et al  
Case No: 07 Civ. 8207  
Our File No: 07-5288

*Plaintiff is a color photograph  
of a laceration on her arm or  
should be provided for viewing at  
some before the*

Dear Magistrate Peck:

SO ORDERED:  
*[Signature]*  
Hon. Andrew Jay Peck  
United States Magistrate Judge

We represent the defendant Butler in this matter. The plaintiff's deposition was recently conducted on February 5, 2008. During the deposition the plaintiff testified that she sustained multiple lacerations which resulted in scarring. Plaintiff's counsel refused to allow the alleged scarring to be shown/viewed by our attorney at the deposition. Plaintiff's counsel also refused to consider providing photographs of the alleged scarring.

We have spoken to plaintiff's counsel, Jeff Koenig on February 13, 2008 and he reiterated his refusal to disclose the alleged scarring to defendant's counsel via plain viewing or photograph.

We request a discovery conference to address the issue. Alternatively, we will accept a stipulation from the plaintiff's attorney that no claim will be made for scarring and no mention of scarring will be made to the jury.

Very truly yours,

MARTIN, FALLON & MULLÉ

*[Signature]*  
BY: Richard C. Mullé (2151)  
Extension 107

RCM:vc  
CC: Jaroslawicz & Jaros, LLC  
Marjorie E. Bornes, Esq.

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

**Dated:** February 20, 2008

**Total Number of Pages:** 2

TO	FAX NUMBER
Richard C. Mulle, Esq.	516-421-5439
David Jaroslawicz, Esq. Marjorie E. Bornes, Esq.	212-227-5090

## **TRANSCRIPTION:**

**MEMO ENDORSED 2/20/08**

**Plaintiff is to allow photographic or in person examination of her scars or she will be precluded from raising the issue before the jury.**